IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.42 OF 2001

Pradeep Balkrishna Gaikwad)
Aged 27 years, residing at Kalkai)
Kond, Taluka Dapoli, Dist.: Ratnagiri)
At present lodged in Kolhapur Central)
Prison, Kolhapur.).. APPELLANT
)(Org.Accused)

VERSUS

The State of Maharashtra).. RESPONDENT

Mr.S.B.Shetye, Advocate for the Appellant Accused.

Smt.V.R.Bhonsale, Additional Public Prosecutor,
for the Respondent State.

**CORAM: V.G. PALSHIKAR AND
SMT.NISHITA MHATRE, JJ.**

DATED: 20TH APRIL 2005

ORAL JUDGMENT : (PER MHATRE, J.)

. This Appeal is directed against the judgment of the Additional Sessions Judge, Ratnagiri dated 14th November 2000 in Sessions Case No.86 of 1999. The Appellant has been convicted under Section 302 and sentenced to life imprisonment and a fine of Rs.1,000/-, in default to suffer rigorous imprisonment for three months.

2. The case of the prosecution is that the

Appellant suspected that his wife Pratiksha had an illicit relationship with the victim Sambhaji. He confronted Sambhaji with his suspicions. The Appellant also asked his mother Ranjana PW2 to question Sambhaji about the relationship. Sambhaji denied the allegations made by the Appellant. However, the Appellant struck Sambhaji on his head with an axe causing his death. The Appellant was, therefore, charged under Section 302 of the Indian Penal Code. The trial resulted in him being convicted and sentenced to life imprisonment.

3. The main contention raised in the Appeal is that the evidence of the prosecution witnesses is not consistent and believable and, therefore, the prosecution has failed to establish any case against the Appellant. It was also submitted on behalf of the Appellant that the recovery of the axe was not at the instance of the Appellant but it was PW3 who handed over the axe to the police. In such circumstances, it is urged by the learned Advocate appearing for the Appellant that the conviction under Section 302 is not sustainable and is, therefore, required to be set aside.

4. We have scrutinised the evidence led before the Sessions Court minutely and on a reappraisal of the same, we find no reason to interfere with the judgment impugned in this Appeal. PW1 Sangita is the wife of the

victim. The victim was brought up by PW2, the Appellant's mother. She and the victim were residing with their children in PW2's house. The Appellant and his family were dwelling in the same place, but with a separate kitchen. She has deposed that on the night of 21st March 1999, the Appellant questioned the victim regarding the illicit relations that he suspected that his wife had with the victim. After an argument between the Appellant and the victim, the Appellant requested his mother PW2 Ranjana to enquire with the victim regarding his relations with Pratiksha, the wife of the Appellant. The victim denied the allegations. PW1 has stated that the Appellant left the residence on the pretext of making a couple of telephone calls. Her husband, the victim, retired for the night in another room. She heard Ranjana PW2 shouting from that room. On rushing there, she saw the victim lying in a pool of blood with an injury on his head. The Appellant was standing close to the victim with an axe in his hand. She has further testified that the Appellant inflicted another blow with the axe on the victim's head in her presence. She attempted to snatch the axe away from the Appellant. She has also stated that the daughter and son-in-law of PW2 then rushed to the spot from their house on hearing the cries of PW2. Her husband was then removed to the hospital at Dapoli where he succumbed to the injuries later that night. Her complaint was

recorded thereafter by the police.

5. The testimony of PW1 has been corroborated by PW2, Ranjana, as well as PW3, Nandkumar, the son-in-law of PW2. PW2, who is an eye witness, has stated that she had brought up Sambhaji as her own son. She has deposed that when she went into the room where Sambhaji had retired for the night, the Appellant came into the room and inflicted an injury on the head of the victim with an axe. Her evidence has not been shaken in the cross-examination. PW3, Nandkumar, has deposed to the fact that he and his wife Neelprabha rushed to the residence of his mother-in-law when they heard her calling out. He found the Appellant with an axe in his hand. He has deposed that he took charge of the axe and produced it when the police reached the spot at 3.00 a.m. He has identified the axe as Article No.3. The panchas PW5 and PW6 have identified blood stained clothes and the axe which was seized. The clothes belonged to the Appellant. The blood stained saree of PW1 was also seized as she had laid her husband’s head on her lap after the blows were inflicted on him. PW8 is the Medical Officer who performed the post mortem. This witness has opined that the death occurred on account of the cardiorespiratory arrest due to vital organ failure following extensive brain injury.

6. Taking into consideration the entire evidence on record, we are of the view that the ocular evidence of PW2 has been corroborated by the testimony of PW1 and PW3 in all material particulars. The prosecution has been successful in establishing the motive for the Appellant to commit the offence-the suspected illicit relations between his wife and the victim. There is no doubt that the Appellant intended to kill the victim by inflicting the blows with an axe on the victim’s head. There are no discrepancies inconsistencies or omissions in the evidence of the prosecution witnesses which could be considered fatal to the prosecution case. The medical evidence supports the ocular evidence.

7. The learned Advocate for the Appellant urged that the recovery not having been made at the Appellant’s instance, the prosecution has failed to establish that the axe seized was the murder weapon or that the Appellant had inflicted the injuries with the same. This submission, in our opinion, is without merit. PW3 pointed out the axe to the police, which he had taken from the Appellant’s hand. It has been exhibited as Article 3. The reports of the Chemical Analyser indicate that the blade of the axe was stained with human blood of "B" group, whereas the Appellant had the blood group "A". The victim’s blood group was "B".

The axe was seized from the scene of the incident. We, therefore, have no hesitation in accepting the finding of the Sessions Court that Article 3, the axe, was the murder weapon used by the Appellant.

8. The evidence discloses that the Appellant has committed culpable homicide amounting to murder and, therefore, the Sessions Judge was right in convicting and sentencing him under Section 302 of the Indian Penal Code.

9. Appeal dismissed.

(V.G. PALSHIKAR, J.)

(SMT.NISHITA MHATRE, J.)